STATE OF MICHIGAN

COURT OF APPEALS

REAL ESTATE ONE, INC., a Michigan Corporation, REAL ESTATE ONE, INC., d/b/a RALPH MANUEL ASSOCIATES, and KATHLEEN DALTON,

Plaintiffs-Appellants,

v

AMERICAN ARBITRATION ASSOCIATION, INC., a New York Non-Profit Corporation, NICOLA GILSON, MATTHEW GILSON, CRANBROOK REALTORS, INC., a Michigan Corporation, DONNA STONE, DR. WENDY GRIFFITH, NICHOLAS DeSELLIER, JANET MITCHELL, OLENA SAMOYLENKO, ALEX SPIEGEL, JANET ROBERTSON, SANDY ROBERTSON, BETH ROSE, ROSE PREMIERE AUCTION GROUP, LLC, an Ohio Limited Liability Company, SAMUEL HANLON, SHIYAN LI, LANSHUN XI, CENTURY 21 HARTFORD SOUTH, INC., a Michigan Corporation,

Defendants-Appellees.

UNPUBLISHED
February 1, 2005

No. 249970
Oakland Circuit Court
LC No. 02-045113-CZ

REAL ESTATE ONE, INC., a Michigan Corporation REAL ESTATE ONE, INC., d/b/a RALPH MANUEL ASSOCIATES, and KATHLEEN DALTON,

Plaintiffs-Appellees,

v

AMERICAN ARBITRATION ASSOCIATION, INC., a New York Non-Profit Corporation, NICOLA GILSON, MATTHEW GILSON, CRANBROOK REALTORS, INC., a Michigan

No. 250050
Oakland Circuit Court
LC No. 02-045113-CZ

Corporation, DONNA STONE, DR. WENDY GRIFFITH, NICHOLAS DeSELLIER, JANET MITCHELL, OLENA SAMOYLENKO, ALEX SPIEGEL, JANET ROBERTSON, SANDY ROBERTSON, BETH ROSE, ROSE PREMIERE AUCTION GROUP, LLC, an Ohio Limited Liability Company, SAMUEL HANLON, SHIYAN LI, LANSHUN XI, CENTURY 21 HARTFORD SOUTH, INC., a Michigan Corporation,

Defendants-Appellants.

Before: Meter, P.J., and Wilder and Schuette, JJ.

METER, J. (*concurring*).

I fully concur in the majority's opinion but write separately to make two additional observations with respect to the issues briefed by the parties in Docket No. 249970.

I.

First, even though we need not reach issue of arbitral immunity in Docket No. 249970, I note that case law supports the successor trial judge's statement that "there is a form of quasi-immunity that's granted to the American Arbitration Association which prevents a party from challenging the method by which the American Arbitration Association proceeds in these arbitration matters." For example, in *Hospitality Ventures of Coral Springs, LC v American Arbitration Ass'n*, 755 So2d 159, 160 (Fl App, 2000), the court noted that the proper parties in a lawsuit involving the propriety of arbitration in a particular case are "the parties to the arbitration agreement, not the potential arbitrators. The law does not require potential arbitrators to expend the time and money to participate in a lawsuit where the parties are fighting over the arbitrability of a dispute." Additionally, in *Corey v New York Stock Exchange*, 691 F2d 1205, 1211 (CA 6, 1982), the court stated that a party contesting the jurisdiction of arbitrators can pursue a remedy not against the arbitrators but against the "real" party involved in the dispute.

The case most analogous to the instant case is *International Medical Grp v American Arbitration Ass'n*, 312 F3d 833 (CA 7, 2002). In that case, the plaintiff argued that because it was not a party to the insurance contract at issue that provided for arbitration, AAA should not have asserted jurisdiction over it. *Id.* at 842. The plaintiff asserted that "arbitral immunity does not apply here because it was never a party to a contract authorizing arbitration and the AAA therefore acted in the clear absence of jurisdiction." *Id.* at 843. The court stated:

> The appropriate remedy for an administrative mistake by the AAA (and we are not finding here that the AAA erred in accepting the demand and proceeding with the arbitration) would be for the wronged party to seek injunctive relief against the party initiating the arbitration in an appropriate court. The AAA need not be a

> party to that action and should be spared the burden of litigating the appropriateness of its exercise of jurisdiction. [*Id.* at 844.]

While the above cases did not involve requests for injunctive relief, I find that the reasoning in them is persuasive by analogy and supports the trial court's orders in the instant case.

II.

Second, with respect to plaintiffs' argument that "if the courts are unwilling to compel AAA to live up to its own rules by reviewing pro forma arbitration clauses, at the very least a declaratory judgment should issue holding that the burden of establishing arbitrability, once it has been contested in writing by REO, should be placed on the claimant," I note that plaintiffs, in making this argument, rely on the following statement from *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 100; 323 NW2d 1 (1982): "[i]f a burden must be placed on one of the parties to seek a preliminary judicial determination [of the arbitrability of a dispute], it should be on the party seeking to compel arbitration." This statement constitutes non-binding obiter dictum because it was not necessary to resolve the dispute at issue in that case. See, generally, *Dressel v Ameribank*, 468 Mich 557, 568 n 8; 664 NW2d 151 (2003). I instead find persuasive the holding in *International Medical*, *supra* at 844: "The appropriate remedy for an administrative mistake by the AAA . . . would be for the wronged party to seek injunctive relief against the party initiating the arbitration in an appropriate court." Reversal in the instant case is thus unwarranted.

/s/ Patrick M. Meter